

Fri Sep 02 09:52:35 EDT 2016  
Leavy, Jacqueline@epamail.epa.gov  
FW: Re - PUERTO RICO'S LANDFILL CRISIS  
To: CMS.OEX@epamail.epa.gov

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**From:** Hiram J. Torres Montalvo [mailto:hjtorres@hramjose.com]  
**Sent:** Thursday, September 01, 2016 5:45 PM  
**To:** Mccarthy, Gina <McCarthy.Gina@epa.gov>  
**Cc:** Emerson, Michael <Emerson.Michael@epa.gov>; Fritz, Matthew <Fritz.Matthew@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>  
**Subject:** Re - PUERTO RICO'S LANDFILL CRISIS

Dear Administrator McCarthy:

I am writing you on behalf of Puerto Rico Limpio, a citizens' action group dedicated to safe and sustainable landfills in Puerto Rico. I am writing to share with you a very disturbing report we recently published, entitled "The Poisoning of Puerto Rico", based on internal documents and communications obtained under the Freedom of information Act(FOIA) from Region 2 of your Agency.

Attached to this email you will find a copy of the report, plus a letter for you from our organization addressing the most important issues contained in the report.

We hope to hear from you soon.

Sincerely,

Hiram J. Torres Montalvo, Esq.

Co - Founder of Puerto Rico Limpio

**PMB 136 La Cumbre  
273 Sierra Morena  
San Juan, PR 00926-5542 Tel: 787.904-6336**

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September 1, 2016

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20460

Dear Administrator McCarthy:

I am writing you on behalf of Puerto Rico Limpio, a citizens' action group dedicated to safe and sustainable landfills in Puerto Rico. I am writing to share with you a very disturbing report we recently published, entitled "The Poisoning of Puerto Rico", based on internal documents and communications obtained under the Freedom of Information Act (FOIA) from Region 2 of your Agency. I also respectfully insist that immediate action be taken to rectify the negligent inaction by the Region 2 administrator, Judith Enck, in response to a crisis that the EPA has known about in detail for more than 20 years.

The report details how internal documents from EPA Region 2 show its leadership systematically failed to protect the people of Puerto Rico from imminent and substantial danger to public health and the environment. The region's enforcement staff repeatedly warned that, for decades, widespread non-compliance has existed with the minimum requirements of Subtitle D of the Resources Conservation and Recovery Act (RCRA) of 1985. Both Ms. Enck and her predecessor, Alan Steinberg, were aware that the local body, the Puerto Rico Environmental Quality Board (EQB), was incapable or unwilling to carry out its permitting authority granted by the EPA in 1994, based on a permitting plan the EQB has never implemented. Yet neither regional administrator used their authority under RCRA to properly address it.

There were repeated, confidential warnings from EPA Region 2 enforcement staff dating from 2005 to 2014 that the EQB was not effective, had "largely not addressed" the widespread non-compliance at landfills, and had "failed" to carry out local enforcement authority the EPA had granted it. The enforcement staff also recommended multiple times, including twice during Enck's tenure, that EQB's authority be revoked and EPA enforce RCRA directly in Puerto Rico. But when confronted with the facts, EPA Region 2 has been dismissive and evasive:

- In correspondence from Rep. Dennis Ross of Florida on May 26, 2016, he asked you a series of important questions related to the landfill crisis in Puerto Rico. He reiterated EPA's power to revoke the EQB's authority, and its "full and plenary authority" under RCRA Section 7003 to take legal or administrative actions to address "imminent and substantial endangerment to health or the environment" at Puerto Rico's landfills. In her reply on your behalf, dated June 21, 2016, Ms. Enck ignored the urgency of Congressman Ross' concerns and wrote that "[i]t should be noted that the federal regulations governing solid waste are not directly enforceable in Puerto Rico, as the Puerto Rico Environmental Quality Board has been approved by EPA, pursuant to statute, to conduct its own solid waste compliance and enforcement program." She went on to write the EPA had finalized nine consent orders and has also issued three unilateral administrative orders in Puerto Rico, compared to the volumes of documentation of "widespread" non-compliance at more than twice that many sites.
- In a story by Energy & Environment Publishing (E&E) on August 24, 2016, Ms. Enck is quoted as saying yet again that "[w]orking with the Environmental Quality Board in Puerto Rico, which has primary responsibility for enforcing landfill regulations, the EPA has taken action to ensure that landfills in Puerto Rico close properly. In the past decade, the EPA has taken direct action to close or begin the closure process at Aguadilla, Arecibo, Florida, Isabela, Juncos, Lajas, Moca, Santa Isabel, Toa Baja and Vega Baja's landfills. This work continues." Eight of those ten sites are still open, still receiving waste and operating out of compliance with RCRA. Twice as many other toxic landfills have not faced action and threaten our people to this day.
- In addition, Jose C. Font, who was the acting director of the EPA Caribbean Environmental Protection Division from 2012 to this year, claimed in a Telemundo report on August 25, 2016 that the EPA was not negligent of its oversight role with the EQB, but "in the last 20 years, they have developed specific strategies, directed at training the EQB to achieve the compliance of these facilities, and as we all know, the results have not been as expected." This is clearly an admission of failure, and Puerto Rico has to suffer the results of that failure. The same Telemundo report noted that the new director of the Division, Carmen Guerrero, refused to comment.

In sum, this is a shocking pattern of wilful dereliction of federal responsibility. The people of Puerto Rico can no longer put their faith and confidence in Judith Enck to provide the federal protection that every American citizen is entitled to under RCRA. It is vital that you take immediate action to put an end to the widespread danger that mostly disadvantaged communities in Puerto Rico are being forced to suffer under. As Congressman Luis V. Gutierrez said in June in a speech denouncing Puerto Rico's landfill crisis, "low-income communities of color are always paying the price when it comes to environmental injustice." The EPA's environmental justice initiative, EJ2020 Action Agenda, will have no credibility if so many American low-income communities of color in Puerto Rico are once again subject to EPA's inaction, negligence and blindness to its responsibility to protect the public.

Puerto Rico Limpio is available to be of constructive assistance to you and your Agency to help address this problem with the urgency and attention it has deserved for far too long.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hiram J. Torres Montalvo'.

HIRAM J. TORRES MONTALVO  
Co-founder, Puerto Rico Limpio

CC:

The Honorable Pedro Pierluisi  
The Honorable Tom Bishop  
The Honorable Raul Grijalva  
The Honorable James Inhofe  
The Honorable Barbara Boxer  
The Honorable Orrin Hatch  
The Honorable Marco Rubio  
The Honorable Robert Menéndez  
The Honorable Bill Nelson  
The Honorable Sean Duffy  
The Honorable Tom MacArthur  
The Honorable Nydia Velázquez

# EXPOSING THE EPA'S NEGLECT OF PUERTO RICO'S LANDFILL CRISIS

An investigation by Puerto Rico Limpio



# EXPOSING THE EPA'S NEGLECT OF PUERTO RICO'S LANDFILL CRISIS

The U.S. Environmental Protection Agency (EPA) took little action despite documenting more than a decade of severe violations of federal landfill safety rules in Puerto Rico, and allowed most of the island's municipal landfills to operate as "open dumps", contaminating soil, water and air in violation of federal law.

These facts are exposed by a trail of EPA documents and communications obtained here by Puerto Rico Limpio through the Freedom of Information Act (FOIA), and made public exclusively in this report.

No effective enforcement has ever happened in Puerto Rico, and EPA didn't effectively respond.

The documents show that over two decades, EPA staff documented a state of regulatory chaos where meetings and communications took place with Puerto Rico's governor, senior officials, its Environmental Quality Board (EQB), municipal leaders and landfill operators, and agreements were routinely broken, ignored, refused or stonewalled. In the end, no effective enforcement has ever happened in Puerto Rico, and EPA didn't effectively respond.



Judith Enck

## Here's What We Found

The EQB has never been minimally effective in enforcing federal standards since it was approved for this role by the EPA in 1994. **And EPA knew.**

Newly obtained documents show that shortly after EQB was granted enforcement power, **it gutted local landfills rules without notifying the EPA.**

The EPA learned of the secret rule changes in 2005 but **failed to take effective action to restore federal standards in Puerto Rico's regulations.**

Soon after Judith Enck took over as Regional Administrator of EPA Region 2, she pulled back on pressuring senior Puerto Rican authorities to act on senior staff's repeated and urgent warnings about threats to human health and the environment. **Since 2009, Enck limited her response to mostly ineffective closure actions against less than half of the landfills her staff has documented as unsafe.** Only one landfill has closed during her tenure.

# FOREWORD

By Dr. Michael K. Dorsey

Twenty-two years ago the President of the United States mandated all Federal agencies make “environmental justice” part of their mission by “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions” — including the Commonwealth of Puerto Rico.

The President’s directive, enshrined in an Executive Order, compelled the U.S. Environmental Protection Agency (EPA) to turn to its newly-created Office of Environmental Justice to advance new programs and policies to guarantee American citizens equal environmental protection under the law. Though it was slow to recognize it, the EPA now accepts that equal environmental protections are often lacking in communities harmed first and most by the disproportionate siting and malfeasance of hazardous waste and other environmental and public health threats.

Puerto Rico is by no means exempt from the scourge of environmental injustice — or what many scholars, over the past three decades and counting, prefer to dub: environmental racism.

Adding to the misery of such injustice, many disproportionately burdened communities are often the most marginalized, commonly because of their racial or ethnic status and paltry income. In the United States hazardous waste and is disproportionately dumped on fellow poor, black and brown citizens living at the margins of an American dream as it becomes more akin to a nightmare. Puerto Rico is by no means exempt from the scourge of environmental injustice — or what many scholars call environmental racism.

Two-thirds or more of Puerto Rico’s municipal landfills do not comply with EPA rules. There are not just one or two landfills out of compliance. The problem affects the entire island. Of the Commonwealth’s 27 municipal landfills, at least 20 are noncompliant with basic environmental rules. Recently in a tersely worded letter to a Member of Congress, the EPA Regional Administrator with oversight responsibility

for the island’s landfill crisis asserted: “For many years, the EPA has worked to improve the management of solid waste in Puerto Rico.” Simultaneously the EPA also admits “landfills in Puerto Rico have not always been closed in accordance with the minimum federal and state regulations.” This report reveals, through internal EPA documents, that the Agency has, in fact, simply failed to take appropriate actions for decades to address what it identified as an “imminent threat to human health and the environment.”

Lofty claims of proper oversight alongside admissions of the abrogation of basic duties from the EPA are cause for serious concerns at the highest levels. Such contradictory claims raise serious questions about leadership, management oversight, and very well may point to criminal negligence. This report by Puerto Rico Limpio details almost a generation of “looking the other way” by the EPA and its counterpart on the island: the Puerto Rican Environmental Quality Board. The findings are beyond disturbing. Enforcement staff warnings and suggestions are dialed down or disregarded. All the while communities are left in harm’s way to face problems that are only partially addressed, if at all.

The EPA is renewing its environmental justice agenda for the 21st century, in what it calls: EJ 2020. According to preliminary reports, “EJ 2020 is EPA’s EJ plan of action that will involve every EPA office and region.” It seems that Puerto Rico, pursuant to a 20th century presidential Executive Order, would be a great place to begin to renew serious work on environmental justice in the 21st century. At a minimum urgent resources and serious managerial oversight will be needed to stem the tide of the burgeoning landfill crisis. We should accept nothing less.



Dr. Michael K. Dorsey is an appointee on the U.S. EPA’s National Advisory Committee.

## EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA) took little action despite documenting more than a decade of severe violations of federal landfill safety rules in Puerto Rico, and allowed most of the island's municipal landfills to operate as "open dumps", contaminating soil, water and air in violation of federal law.

These facts are exposed by a trail of EPA documents and communications obtained here by Puerto Rico Limpio through the Freedom of Information Act (FOIA), and made public exclusively in this report.

The documents show that over two decades, EPA staff documented a state of regulatory chaos where meetings and communications took place with Puerto Rico's governor, senior officials, its Environmental Quality Board (EQB), municipal leaders and landfill operators, and agreements were routinely broken, ignored, refused or stonewalled. In the end, no effective enforcement has ever happened in Puerto Rico, and EPA didn't effectively respond.

## The Gross Malfeasance of the EQB

EPA files dating back to 1994 shows that Puerto Rico proposed an elaborate plan to create a fully compliant, safe and sustainable solid waste management system on the island when the Puerto Rico Environmental Quality Board (EQB) applied to the EPA for local enforcement authority. But as the years went on, the EPA documents show that the EQB's promises in its application were never carried out.

The documents show that the 1994 plan submitted by EQB called for expanded enforcement personnel, but the EPA stood by as the local authorities systematically eliminated key landfill enforcement staff right under its nose during a key period: from 14 staffers in 2000, to 5 in 2005, to 1 in 2010 and eventually none in 2012.

Worse still, the EPA discovered in 2005 that shortly after local authority was granted, the EQB gutted key local landfill rules, taking them below federal standards without notifying the federal agency as required by law. Despite initial high level warnings from EPA Region 2 to the then-governor of Puerto Rico, the EQB dragged its feet in replying. After Judith Enck took over as administrator of Region 2, the records indicate high-level engagement with Puerto Rico's authorities ceased.

**The EPA took little action despite documenting more than a decade of severe violations.**





## The Dereliction of Duty by the EPA

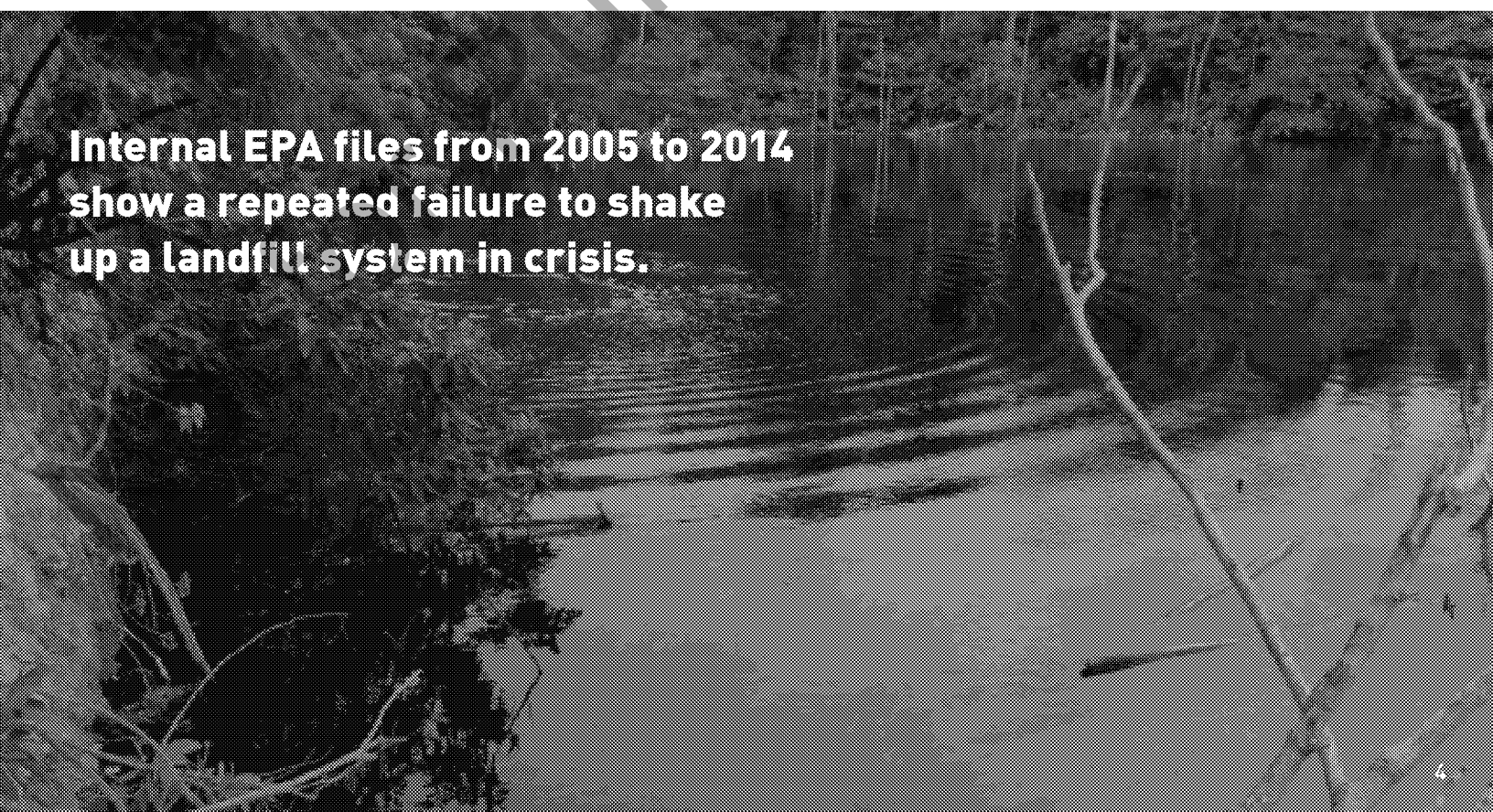
But relative to the enormity of the problem documented by EPA Region 2 enforcement staff, the regional leadership did not take decisive action to revoke the Puerto Rico Environmental Quality Board's (EQB) enforcement authority and directly enforce federal laws at Puerto Rico's landfills.

As the years went on, EPA documents show that the EQB's promises in its application were never carried out.

In fact, under current Regional Administrator Judith Enck, a specific recommendation by enforcement staff to revoke the EQB's authority and directly enforce federal standards was made in the face of the landfill crisis presenting "an imminent and substantial threat to human health and the environment". But Enck ignored the recommendation and eased the pressure on local authorities. In turn, the communities around as many as two dozen landfills have likely been exposed to contamination of groundwater, shorelines, rivers, marine resources, protected wetlands and nature reserves, while the EPA recorded internal reports of years of violations of the Resources Conservation and Recovery Act (RCRA).

The sequence of internal EPA assessments from 2005 to 2014 show a repeated failure to shake up a landfill system in crisis on the island. Most of the landfills are repeatedly documented by EPA as being in "significant", "serious" or "widespread" non-compliance, and are characterized as "open dumps". Despite files that acknowledge decades of violations that threatened public health and environmental safety, the EPA is documented as using its unilateral intervention authority under Section 7003 over two decades only against less than half of the non-compliant landfills. The result of EPA's dereliction of its federal responsibility is that most of Puerto Rico's 27 current landfills that are described in EPA's own files as "unlined open dumps" — often in environmentally sensitive regions — and are still operating today.

Many of the areas impacted in Puerto Rico are lower income or impoverished with residents that do not have the same access to legal protections as wealthier communities. Such neglect constitutes a form of environmental injustice, where disadvantaged American communities in Puerto Rico receive less federal protection than others do on the mainland.



**Internal EPA files from 2005 to 2014 show a repeated failure to shake up a landfill system in crisis.**

## **The report raises a number of alarming questions about why the EPA's actions were so neglectful in protecting Puerto Rico's communities.**

- Why has EPA's current Region 2 administrator, Judith Enck taken such a tepid approach to the crisis despite repeated, glaring assessments for her entire term in office? Was EPA Administrator Gina McCarthy made aware of the landfill crisis? When, and to what extent?
- Has the EPA or the Puerto Rico government conducted environmental testing or assessments of the extent of water, air and ground contamination around landfill sites that have been allowed to violate safety rules for decades? Or were such investigations stymied internally?
- Are the non-compliant landfills also violating the federal Clean Air Act and Clean Water Act?
- What will a thorough review of the document trail inside the EQB, and between the EQB and the landfills, reveal about the 1997 gutting of local regulations? Were there financial interests in Puerto Rico directly involved that went beyond the municipalities themselves?
- With so many landfills not even sorting or supervising the incoming trash at these sites, how bad has illegal dumping of hazardous waste gotten in Puerto Rico under EPA's watch?
- And will further digging uncover crimes that were committed by individuals, companies and public officials and workers?



**Has the EPA or Puerto Rico conducted environmental testing on the extent of contamination around landfill sites in violation for decades?**

# I WHAT THE EPA COULD HAVE DONE UNDER RCRA

In 1985, the Resource Conservation and Recovery Act (RCRA), Subtitle D, was adopted to govern waste disposal at municipal waste landfills in the United States, and the provision is administered by EPA. Regulations established under Subtitle D ban open dumping of waste and set minimum federal criteria for the operation of municipal waste and industrial waste landfills — landfills classified as “open dumps” are non-compliant with the federal minimum standards. Puerto Rico, which falls under Region 2 of the EPA, is included under RCRA Subtitle D.

Minimum operational requirements for municipal landfill operation impose: access control, liner protection for landfill cells, protection from and monitoring of methane gas build-up, liquid leachate collection and groundwater monitoring, and the daily coverage of municipal waste.

The minimum standards also include design criteria, location restrictions, financial assurance, corrective action (cleanup), and closure requirement. States play a lead role in implementing these regulations and may set more stringent requirements. In order to qualify as the lead

in implementing Subtitle D, states were required to apply to the EPA for a public review of their planned permitting program, and EPA approval of the adequacy of the state’s permitting program.

The EPA is authorized to revoke its approval given to state permitting programs that are “inadequate”, and unilaterally implement federal minimum standards upon landfills in states, or in jurisdictions like Puerto Rico.

So while a state or territory like Puerto Rico has authority to implement its permitting authority, EPA has sole power to revoke it, and importantly, it also has its own separate regulatory authority under RCRA Section 7003 to take action on the handling, transportation, or storage of solid waste where it may present “imminent and substantial endangerment to health and the environment” to bring lawsuits or issue orders. Citizens are also entitled to bring suit under RCRA 7002 against any person, including any governmental entity, who is “alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or order which is effective pursuant to RCRA”.

**The EPA is authorized to revoke its approval given to state permitting programs that are “inadequate”, and unilaterally implement federal minimum standards.**



## II GROSS MALFEASANCE OF THE EQB, DOCUMENTED BY EPA

### Puerto Rico's Failed 1994 Plan

In 1994, the EPA reviewed an application for the permitting and enforcement authority for Puerto Rico's landfills to the EQB Puerto Rico Environmental Quality Board (EQB). To grant that authority, EPA was required to review Puerto Rico's proposed oversight, permitting and enforcement plans to determine that they were adequate.

On paper, the EQB's application appeared thorough and in line with the letter and spirit of RCRA, Subtitle D. Puerto Rico had 61 operating landfills at the time, and committed to permanently close 31 facilities: "Twenty-nine municipal SLFs (Plus 1 private facility) will be subject to the regulation after April 9, 1993 (29 municipals and 1 private). **Of these facilities, approximately 19 are scheduled for eventual closure over a 5 to 7-year transition period. ...All existing facilities, including those scheduled for eventual closure, will be permitted under the Regulation and subject to the Part 258 technical requirements. After this transition is complete, approximately 11 regional facilities will continue to serve the Commonwealth.**" Fig 1

But the plan never left the paper it was written on. A review of internal memos written by EPA Region 2 enforcement officers from 2005 to 2014, which assess the situation of landfill enforcement in Puerto Rico, show that the EQB never carried out its plan, nor did it achieve the minimal amount of enforcement that should be tolerated by the EPA under RCRA. The assessments are so bad and unchanging that the officers resorted to repeating the same dire overview in the opening section of every document for nine years.

From the 2005 assessment, by enforcement officer Carl Plossl: **"Many operating landfills in Puerto Rico have been in significant non-compliance with Federal and Commonwealth solid waste landfill regulations for over 10 years and are considered open dumps that present an ongoing risk to human health and the environment. The Solid Waste Management Authority (SWMA) and the Environmental Quality Board (EQB) have not been effective in correcting this non-compliance. (...) Although approximately 30 open dumps have been closed in the last 15 years, the remaining 29 operating municipal solid waste landfills are still in significant noncompliance with both the Commonwealth and Federal Solid Waste Landfill regulations, and there has been no apparent effort made by the Government of Puerto Rico to implement the August 10, 1993 Solid Waste Management Plan."**

From the 2006 assessment, by Plossl and Adolph Everett: **"Most operating landfills in Puerto Rico have been in significant non-compliance with Federal and Commonwealth solid waste landfill regulations for over 11 years and are considered open dumps that present an ongoing risk to human health and the environment. The Solid Waste Management Authority (SWMA) and the Environmental Quality Board (EQB) have not been effective in correcting this non-compliance."**

**Puerto Rico's compliance plan never left the paper it was written on.**



**PUERTO RICO'S**  
**APPLICATION FOR DETERMINATION OF ADEQUACY**  
**OF EQB NON-HAZARDOUS SOLID WASTE MANAGEMENT**  
**PERMIT PROGRAM**

**REVISED SUBMISSION**

**February 17, 1994**

Of these facilities, approximately 19 are scheduled for eventual closure over a 5 to 7-year transition period. (...).

All existing facilities, including those scheduled for eventual closure, will be permitted (...) and subject to (...) technical requirements. After this transition is complete, approximately 11 regional facilities will continue to serve the Commonwealth.



From the 2008 assessment, by Plossl, Philip Flax and Kimiko Link: "Most operating landfills in Puerto Rico have been in significant non-compliance with Federal and Commonwealth solid waste landfill regulations for over 12 years and are considered open dumps that present an ongoing risk to human health and the environment. The Solid Waste Management Authority (SWMA) and the Environmental Quality Board (EQB) have not been effective in correcting this non-compliance from a planning perspective (SWMA-lead) or a program implementation perspective (EQB-lead). In part, this has been attributable to the lack of an integrated Solid Waste Management Plan."

From the 2010 assessment, by Everett and George Meyer: "Many of Puerto Rico's landfills are near capacity, most are out of compliance with federal RCRA and CAA standards, and present an imminent and substantial threat to human health and the environment. Minimal recycling is performed. Although the Puerto Rico Environmental Quality Board (EQB) is approved to implement permitting and enforcement within the RCRA solid waste program, EQB has failed to do so. Likewise, the Puerto Rico Solid Waste Management Authority has not implemented any of the solid waste management plans proposed over the last 15 to 20 years."

From the 2011 assessment, by Everett and Meyer: "Many of Puerto Rico's landfills are near capacity, most are out of compliance with federal RCRA and CAA standards, and present an imminent and substantial threat to human health and the environment. Minimal recycling is performed. Although the Puerto Rico Environmental Quality Board (EQB) is approved to implement permitting and enforcement within the RCRA solid waste program, EQB has failed to do so. Likewise, the Puerto Rico Solid Waste Management Authority has not

implemented any of the solid waste management plans proposed over the last 15 to 20 years."

From the 2012 assessment, again by Everett and Meyer: "The majority of Puerto Rico's landfills are past or near capacity and may present an imminent and substantial threat to human health and the environment. Minimal municipal solid waste recycling programs are in place. Although the Puerto Rico Environmental Quality Board (EQB) is approved to implement permitting and enforcement within the RCRA solid waste program, EQB has largely not addressed non-compliant landfills via enforcement actions. Similarly, the Puerto Rico Solid Waste Management Authority has not implemented any of the solid waste management plans proposed over the last 15 to 20 years." From the 2013 assessment, by Meyer: "The majority of Puerto Rico's landfills are past or near capacity and may present an imminent and substantial threat to human health and the environment. Minimal municipal solid waste recycling programs are in place. Although the Puerto Rico Environmental Quality Board (EQB) is approved to implement permitting and enforcement within the RCRA solid waste program, EQB has largely not addressed non-compliant landfills via enforcement actions. Similarly, the Puerto Rico Solid Waste Management Authority has not implemented any of the solid waste management plans proposed over the last 15 to 20 years."

From the 2014 assessment, by Leonard Voo and Judy Mitchell: "The majority of Puerto Rico's landfills are past or near capacity, are out of compliance with operating criteria, and may present an imminent and substantial threat to human health and the environment."



## EQB Guts Safety Rules

The issue of regulatory non-compliance is not just confined to the side of enforcement. In 1997, it crossed a new line into willful gutting of basic rules by the authorities themselves. That year, the Puerto Rican government amended the regulations approved by EPA in the permitting process. This change was done without notifying EPA, in violation of federal regulations, and was not noticed by EPA until 2005.

The changes in the regulations would exempt municipalities from financial assurance compliance, and allow new horizontal expansions to occur outside of the original boundaries of the landfill area and exempt them from liner and leachate collection requirements. It was a wholesale gutting of safety rules for landfills, and violated the EQB's duty to enforce federal standards.

Then-Regional Administrator Alan Steinberg told Puerto Rico's governor the EPA could revoke local enforcement power.

An internal EPA email reveals that the EPA discovered this violation of federal law almost a decade afterwards, in June 2005. The email is part of a thread among a group of enforcement staff at EPA Region 2 who are discussing "lateral expansion of the Toa Baja open dump" (a landfill that is still operating today). In it, one official informs the group that **"we have checked the current (our translation) vs. originally submitted EQB regulations regarding lateral expansion. (...) The original regulation, submitted as part of the program approval application, was written correctly**

**but EQB has inappropriately revised it (...). This has island-wide major implications and needs to be corrected."** <sup>Fig. 3</sup>

The files show that then-Region 2 administrator Alan Steinberg immediately got involved, and the initial responses go to the highest officials in Puerto Rico. A subsequent November 30, 2005, internal email from the same EPA enforcement official, George Meyer, suggests the EQB had been confronted with the rule changes and denied it had happened. The email includes a thread indicating that Steinberg (identified by the initials of his title, "RA", in the email) had sent a letter to the Governor of Puerto Rico, setting out "milestones" for Puerto Rico to meet with EPA. The first milestone read: **"By November 30, 2005, officially notify EPA, in writing (in English), of all changes that have been made to the PR solid waste regulations since EPA approved PR's Solid Waste Mgt. Program."**

However, the email notes that in a meeting held by Steinberg in Puerto Rico, **"EQB repeated its claim that no regulatory changes have been made, so it is not clear if a response will be forthcoming."**

In February 2006, Anibal Jose Torres, the chief of staff to then-Governor Anibal Acevedo Vila, responded to Steinberg in a letter which noted the request for an English translation of the EQB's regulations as they stood, three months after Puerto Rico had been instructed to provide an analysis of the changes it had made. Torres wrote that the translation would be received at EPA in March 2006, and EPA's "comments" would be "evaluated", but further documents show that the EQB didn't reply until May of that year. But what was finally sent to the EPA later proved that EQB had broken the law.

**Puerto Rico gutted the rules without notifying EPA, in violation of federal law. The EPA found out.**

**From:** Meyer, George@epamail.epa.gov  
**To:** Soler, Berni.Carli@epamail.epa.gov; Severn, William@epamail.epa.gov; Hagen, Robert@epamail.epa.gov; Everett, Adish@epamail.epa.gov  
**Cc:** Golumbsky, Justin@epamail.epa.gov; Plossl, Carl@epamail.epa.gov  
**Subject:** Fw: Lateral Expansion & Finance Factheets  
**Date:** Thursday, June 21, 2006 2:23:26 PM  
**Attachments:** lateral expansion.wpd  
 financial requirement notes.wpd

Gentlemen , we have checked the current ( our translation ) vs. originally submitted EQB regulations regarding lateral expansion ( see attachment below ). The original regulation, submitted as part of the program approval application , was written correctly but EQB has inappropriately revised it , so that lateral expansion beyond the waste boundaries of an existing MSWLF unit is not necessarily considered lateral expansion. This has island - wide major implications and needs to be corrected. Your comment on our assessment is requested.

Carl , as you prepare the letter to EQB ( with a copy to the Mayor of Toa Baja ) objecting to the lateral expansion of the Toa Baja open dump , we should include our concerns with all the other areas on non-compliance at this facility and suggest that not only should it not be laterally expanded , but it should be closed as soon as possible because of its location . Toa Baja is one of the seven "Operation Compliance" Orders and Compliance Plans that EQB agreed to submit to EPA in draft for our review and comment and we will be commenting that the non-compliance is so severe and the land location so unsuitable

We have checked the current (our translation) vs. originally submitted EQB regulations regarding lateral expansion. [...] The original regulation, submitted as part of the program approval application, was written correctly but EQB has inappropriately revised it [...]. This has island-wide major implications and needs to be corrected.

Lateral Expansion & Finance Factheets

(See attached file: lateral expansion.wpd)(See attached file: Financial Requirement notes.wpd)

\*\*\*\*\*  
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In a terse letter from Steinberg to Governor Acevedo Vila on October 5, 2006, Steinberg wrote that the agency received the English translation of EQB's landfill regulations on May 10, but hadn't received the analysis of any changes made along with an explanation that had been demanded for each change. **"EPA did not receive the Attorney General's description of the changes, the rationale for the changes, the certification that the changes were in effect, nor the assurance that the regulations were accurately translated,"** Steinberg wrote. Despite this, the EPA had still found that the gutting of key federal standards had indeed taken place at the EQB: "[W]e have noted a number of changes which are not consistent with federal requirements pursuant to 40 CFR Part 239 and Part 258. These changes include the definition of lateral expansion and the applicability of financial assurance requirements which were highlighted previously. We also noted a significant change to the definition of a composite liner. These changes, along with others EPA has noted, may jeopardize Puerto Rico's municipal solid waste landfill (MSWLF) permitting program approval status." Fig.4 In order to leave no more wiggle room for the EQB, Steinberg attached the original, EPA-approved 1993 Puerto Rico regulations in Spanish which met federal standards to compare to the gutted standards EQB was using. Fig.4

Steinberg's threat against the EQB's authority after his staff discovered the gutting of landfill regulations was an appropriate measure to consider. In the annual Puerto Rico landfill assessment written by EPA officials Carl Plossl, Philip Flax and Kimiko Link, from December 4, 2008, near the end of Steinberg's term in office, such an action was found to be feasible for the Agency to take, and potential legal or statutory pitfalls with direct EPA intervention and enforcement could be addressed: **"The consequences of failure to re-amend the regulations to be consistent with federal requirements could include withdrawal of program approval status which would result in EPA having direct enforcement authority for the 40 CFR Part 258 landfill requirements. However, EPA would not have permitting authority and consequently Puerto Rico would lose the flexibility afforded to approved states which allows construction of new landfills or expansion of existing ones in seismic zones (in which the entirety of Puerto Rico lies). However, EPA could possibly issue specific rules to accomplish this."** Fig. 5 Among the "options and recommendations" that the enforcement staff lists at the end of the document is, simply put: **"Withdraw program approval."** Fig.5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
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OCT 5 2006

Honorable Anibal Acevedo Vilá  
Governor of the Commonwealth of Puerto Rico  
La Fortaleza  
P.O. Box 00902-0082  
San Juan, PR 00902-0082

Dear Governor Acevedo Vilá:

On May 10, 2006 the U.S. Environmental Protection Agency (EPA) received an electronic copy of the English version of the Commonwealth's current solid waste management regulations from the Environmental Quality Board. This submittal was provided in response to a specific request EPA made in our November 2, 2005 letter to you. Although this submittal partially addresses our request, it does not address all the elements of the request. Additionally, based on a preliminary review of this submittal, EPA has concerns regarding the consistency of the Commonwealth's current solid waste management regulations with federal requirements.

In EPA's November 2, 2005 letter to you, among other things EPA requested that by November

These changes, along with others EPA has noted, may jeopardize Puerto Rico's municipal solid waste landfill (MSWLF) permitting program approval status.

were regulations were a key component in EPA's approval of the Solid Waste Management Program.

In response to this request, on May 10, 2006, EPA received via email an electronic copy, translated into English, of the Commonwealth's most current solid waste management regulations. EPA did not receive the Attorney General's description of the changes, the rationale for the changes, the certification that the changes were in effect, nor the assurance that the regulations were accurately translated.

EPA has been assured verbally by the Chairman of the Environmental Quality Board, Carlos Lopez, that all regulatory changes required by EPA will be made.

EPA currently is reviewing the translated version of the regulations it received electronically. Upon our preliminary review, we have noted a number of changes which are not consistent with federal requirements pursuant to 40 CFR Part 239 and Part 258. These changes include the definition of lateral expansion and the applicability of financial assurance requirements which were highlighted previously. We also noted a significant change to the definition of composite liner.

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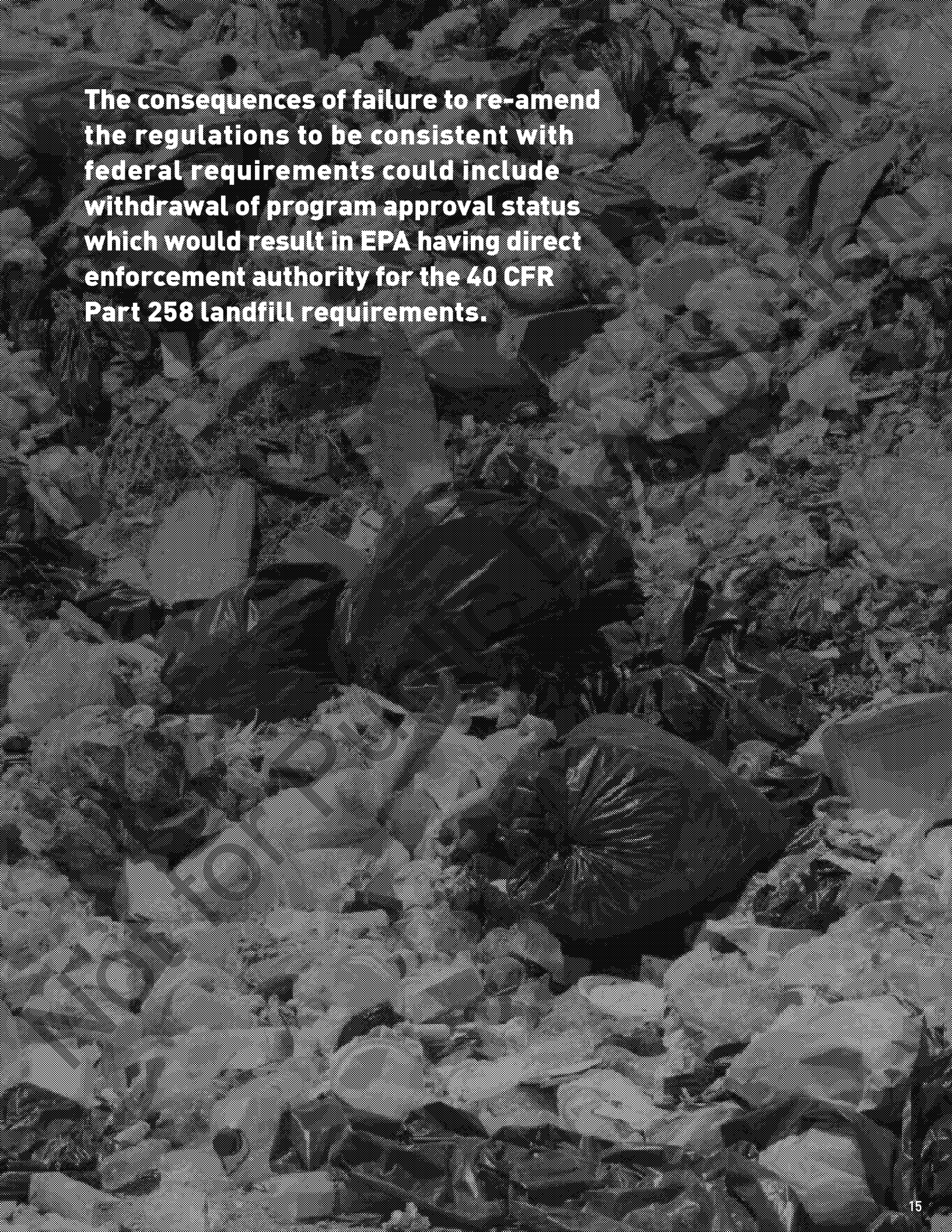
<b>Subject</b>	Puerto Rico Landfill Initiative	<b>Location</b>	Street Address: City: State: Zip Code:
<b>Contact</b>	<u>Carl Plossl</u> <u>Philip Flax</u> <u>Kursko Link</u>	<b>Phone</b>	212-637-4068
<b>Department</b>	DECA-RCB-SET		
<b>Last Updated</b>	12/04/2008 08:09 PM		

**Issue**  
Most operating landfills in Puerto Rico have been in significant non-compliance with Federal and Commonwealth solid waste landfill regulations for over 12 years and are considered open dumps that present an ongoing risk to human health and the environment. The Solid Waste Management Authority (SWMA) and the Environmental Quality Board (EQB) have not been effective in correcting this non-compliance from a planning perspective (SWMA-lead) or a program implementation perspective.

The consequences of failure to re-amend the regulations to be consistent with federal requirements could include withdrawal of program approval status which would result in EPA having direct enforcement authority

Options and recommendations (...)

Withdraw program approval.



**The consequences of failure to re-amend the regulations to be consistent with federal requirements could include withdrawal of program approval status which would result in EPA having direct enforcement authority for the 40 CFR Part 258 landfill requirements.**

### III DERELICTION OF DUTY BY THE EPA

Alan Steinberg departed from his post of Regional Administrator during the transition between the Bush and Obama administrations. While he'd been personally engaged in raising EQB's gross malfeasance with Puerto Rico's top officials, and had explicitly warned about revoking EQB's enforcement authority, Steinberg never followed through on it. The reasons for this are unclear.

Every year, EPA Region 2 was informed by its enforcement staff that Puerto Rico's landfill system was in crisis, and that the EQB was not addressing it. In every assessment, there was meticulous documentation on how the EQB was not carrying out the plan it submitted in 1994 to obtain EPA's approval for its local enforcement authority. In every assessment, the enforcement staff warned Region 2 that a majority of Puerto Rico's landfills "present" or "may present" what is repeatedly described as "an imminent and substantial threat to human health and the environment" — the clear statutory trigger for EPA to intervene unilaterally.

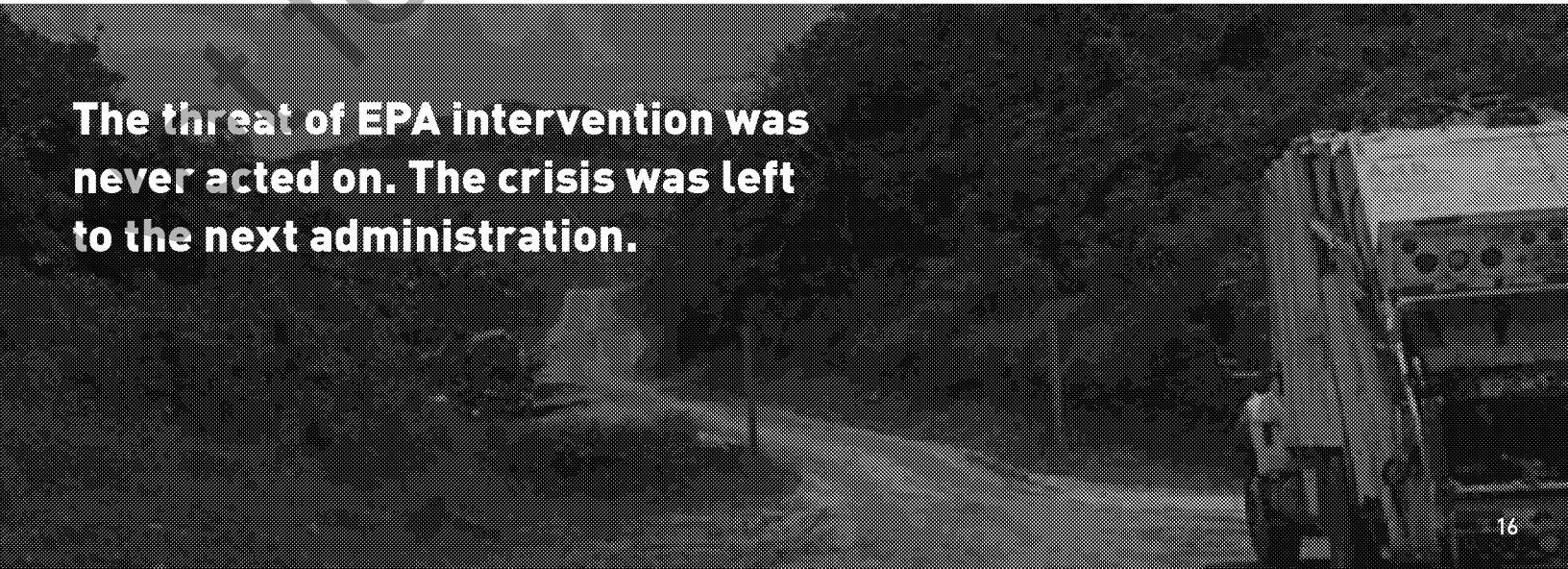
But in the details of these internal assessments, it is revealed that only 2 open dumps have been fully closed in Puerto Rico over the last decade: Aguadilla (2006) and Santa Isabela (2012). Currently, at least 20 out of the remaining 27 landfill facilities are non-compliant with federal minimum standards, and in reviewing these internal assessments from 2005 onward, many of these facilities have never been compliant. The main difference most of them have with their former selves is that they have since been greatly expanded without regard for federal standards and now generate a lot more money per month than they did in 1994.

The records prove that the vast majority of Puerto Rico's landfills continually operate, year after year, in violation of federal rules. Comparing the number of open dumps in relation to compliant sites over the two decades under EQB authority, the results are clear: the EPA has taken little action to carry out its federal duty to the American citizens living near those sites in Puerto Rico. This represents a stunning dereliction of duty by EPA Region 2's leadership.

When Judith Enck took over as President Obama's Regional Administrator, the pressure on the EQB ended.

While Steinberg was personally engaged on the matter, and raised the threat of appropriate EPA intervention, the documents show he didn't act on it. And the crisis was left to the next administration when he left the EPA in 2009.

In the transition, Acting Regional Administrator George Paylou wrote to EQB chairman Pedro Nieves Miranda in August 2009. Nieves Miranda had also taken over in a new administration on the island, under Governor Luis Fortuño. The letter is a marker on how the EQB had still not corrected the gutting of landfill rules since no action had been taken over the course of three years: **"I am writing to re-emphasize the need that the Environmental Quality Board (EQB) take the necessary steps to revise Puerto Rico's solid waste regulations to be consistent with federal landfill criteria. (...) In 1997, the EQB modified the EPA-approved 1993 version of the regulations**



**The threat of EPA intervention was never acted on. The crisis was left to the next administration.**



without consulting EPA. The modified regulations significantly weakened landfill controls and have rendered Puerto Rico's regulations no longer consistent with the federal requirements."

Pavlou detailed the extent to which the EQB had gutted the rules: **"The key changes that EQB made which are of concern to EPA include: removal of the requirement that a professional engineer certify satisfaction of closure and post-closure standards; unacceptable revision of the lateral expansion definition; weakening of the hydraulic conductivity standard for composite liners; removal of education and licensing requirements for personnel involved with hydrology and ground water monitoring; revision of the definition of an "existing solid waste facility"; and, elimination of financial assurance requirements for municipalities."**

Pavlou confirmed the inaction on both sides: **"We have discussed this issue many times through previous correspondence and meetings with no resolution. (...) I would appreciate if you could make this a top priority."**

Nieves Miranda replied to Pavlou ten days later and was emphatic: **"This is a priority of this administration's regulatory agenda."** The new EQB head wrote that he'd created a special committee to work on amendments to local rules and **"our agenda includes a revision of all local regulations to assess their consistency with federal regulations and updating them."** He promised a revision by December 2009.

But when Judith Enck takes over as President Obama's Regional Administrator, the pressure on the EQB ceases. A clear policy shift takes place at the top of Region 2, despite continued warnings from the enforcement staff.

There were no emails, letters or memos obtained through FOIA showing Enck's interest in pressuring EQB despite repeated staff warnings.

The 2010 internal EPA assessment showed no concrete improvements in the overall condition of the landfill system from before Enck's arrival, nor results on the gutting of EQB rules. And it included something more active among the "options and recommendations". It read: **"Consider withdrawal of program approval, which would enable EPA to enforce the federal RCRA landfill requirements directly."**

The internal EPA assessments in 2011 and 2012 noted that the EQB sent its proposed rule revisions in early 2010 to EPA, which the federal agency found to be largely acceptable. But the effort on both sides ends there, according to the record. Puerto Rico never adopts the proper landfill rules, and Enck never raises the issue. The files show no evidence of Enck communicating with the Governor, or the EQB leadership, or pressuring them to act on the rules issue, or anything related to compliance. The 2011 report repeats, in the "options and recommendations" section: **"Consider withdrawal of program approval, which would enable EPA to enforce the federal RCRA landfill requirements directly."** Fig. 6



Superseded  
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<b>Subject</b>	Puerto Rico Landfill Initiative	<b>Location</b>	Street Address: City: State: Zip Code:
<b>Contact</b>	<u>Adolph Everett</u> <u>George Meyer</u>	<b>Phone</b>	212-637-4109
<b>Department</b>	DEPP-RPB DECA-RCB		
<b>Last Updated</b>	12/03/2010 09:40 AM		

**Issue**  
Many of Puerto Rico's landfills are near capacity, most are out of compliance with federal RCRA and CAA standards, and present an imminent and substantial threat to human health and the environment. Minimal recycling is performed. Although the Puerto Rico Environmental Quality Board (EQB) is approved to implement permitting and enforcement within the RCRA solid waste program, EQB has failed

Consider withdrawal of program approval,  
which would enable EPA to enforce the federal  
RCRA landfill requirements directly.

Then, in the 2012 assessment, the tone changes in the “options and recommendations” section: **“As a delegated solid waste program, EQB must implement its solid waste permitting and compliance sections to meet its authorization obligations.”** This line is repeated in the 2013 and 2014 assessments from Region 2 staff.

Enck’s term shows spotty actions against last than half of the non-compliant landfills in Puerto Rico. Many were disregarded or stonewalled.

In the most recently available landfill assessment document from September 3, 2014, the results are clear from the lack of action from Enck: **“A letter requesting that EQB adopt the proposed revisions was sent in January 2011. As of 2/10/14, the changes have not been officially adopted (through promulgation). In recent discussions (...) EQB indicated that it was reviewing the regulation issue again to determine the next steps, which should include promulgating the necessary changes (Status: unchanged as of 5/5/14).”** Fig. 7

There was no record obtained through FOIA requests of any emails, letters or memos from Enck or mentioning Enck’s interest in pressuring EQB or any Puerto Rico official to carry out their responsibilities in protecting the health and environment of the island. And there are no indications of Enck communicating with Puerto Rico’s governors, or the heads of the EQB, about the failure to promulgate the rules that EPA had demanded Puerto Rico revise. It seems that by 2014, the issue was dropped.

The documents suggest a policy decision was made by Enck to back off from the EQB, despite the decades of documented illegality, chaos and failure to enforce minimal standards. And this hands-off attitude towards the EQB has been greatly compounded by the ineffectiveness of the regulatory actions under RCRA § 7003 that Enck decided to take instead.

EPA has authority under RCRA § 7003 to take action on the handling, transportation, or storage of solid waste where it may present “imminent and substantial endangerment to health and the environment” to bring suit or issue orders. Under the construct of issuing orders, EPA can either issue a unilateral order (UO), or an administrative order of consent (AOC) depending on whether consent exists. Alternatively, the EPA can ask the Justice Department to proceed to sue to enjoin landfill activities, or if appropriate to sue for criminal penalties — often these proceedings end in a judicial consent decree.






Fact Sheets - Puerto Rico Landfills - Confidential, Do...

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Title

Puerto Rico Landfill Initiative

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Voo, Leonard

Mitchell, Judy-Ann

Tags

A letter requesting that EQB adopt the proposed revisions was sent in January 2011. As of 2/10/14, the changes have not been officially adopted (through promulgation). In recent discussions (...) EQB indicated (...) it was reviewing the regulation issue again to determine the next steps, which should include promulgating the necessary changes (Status: unchanged as of 5/5/14).

Current Status

Regulatory Changes

In February 2010, EQB transmitted to EPA draft proposed revisions to its existing solid waste regulations per our recommendations. EPA has reviewed these proposed revisions for consistency with the federal requirements

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Page 1 of 15

6/17/2015

The internal EPA reports on Puerto Rico's landfills during Enck's term in office from 2009 onward indicate both administrative and judicial orders in Puerto Rico have been spotty (only nine out of 20 or more non-compliant landfills are targeted for specific actions) and many were recorded as being disregarded by landfills. In the more recent reports, these same facilities have been documented by the Region 2 enforcement staff as violating the Clean Air Act and the Clean Water Act.

Year after year, Enck's staff described an island-wide system of open dumps and an ineffective EQB. She didn't use her authority to respond.

The EPA's most recent landfill assessment summarized the level of non-compliance that existed in 1994, has continued unabated for twenty two years:

**“The Environmental Quality Board (EQB), responsible for permitting and compliance of landfills in Puerto Rico, remains ineffective in its regulatory and enforcement role. Many of the 29 operating landfills are not permitted, the majority are past or near capacity (62% past capacity), and years of enforcement actions by EQB have not resulted in significant improvements in compliance. EPA has inspected operating landfills and found pervasive noncompliance. Few of the landfills have liners or leachate controls, and several are located in karst terrain, exacerbating the risk of ground water contamination. EQB substantively modified its solid waste management regulations in 1997 without notifying EPA as required. EPA performed a comparison of the revised regulations against the 1993 regulations upon which Puerto Rico's program approval was based. Region 2 expressed its concerns about the regulatory changes and the potential jeopardy of Puerto Rico's program approval status to EQB and the Puerto Rico Governor's office numerous times since 2006.”**

The 2014 EPA assessment also detailed the agency's full knowledge of how the EQB had systematically eliminated central enforcement staff over many years:

**“In addition, EQB has eliminated or left open all central solid waste compliance and permitting staff positions. In 2000, EQB employed 14 central solid waste compliance and permitting staff, by 2005, it had been reduced to 5 (with expanded responsibilities). In 2010, staffing was reduced to 1. By 2012, EQB employed no central solid waste compliance and permitting staff.”**

There is no record that has yet been located indicating that effective action had been taken to remedy the staffing situation, or by EPA to intervene directly as it has the authority to do. And given the repeated internal acknowledgments from these newly obtained documents that the EPA has concluded for at least a decade that most of Puerto Rico's landfills pose a substantial threat to the public, the EPA has a responsibility and a duty of care to provide equal protection under the law and specifically, under RCRA § 7003, to intervene urgently in Puerto Rico. To date, the EPA has failed to do this.

This means that Puerto Rico's landfill safety requirements have been non-compliant with federal standards for well over 15 years. The EQB gutted its own rules without notifying EPA as required and was told 9 years later to change them back or lose its enforcement authority. As of 2014 it had not completed the correction. Repeated annual assessments to Region 2 leadership warned of the situation and even recommended direct intervention. But EPA Region 2 under Judith Enck tinkered on the margins, sent letters and held meetings, issued orders or negotiated agreements with less than half the open dumps, most of which would be disobeyed.

Year after year, assessments issued by Enck's enforcement staff described an island-wide system of mostly open dumps as the Puerto Rico government dragged its feet in correcting an illegal set of rule changes from almost two decades ago. But unlike her predecessor, there is no record of Enck considering or discussing the revoking of EQB's authority, reflecting a hands-off approach to a flagrantly chaotic enforcement situation in Puerto Rico.

What is not clear from years of internal EPA assessments is how high the chain of information has traveled. But the documents clearly show that Region 2 Administrator Judith Enck has been aware of the depth and scale of the crisis, and the threat it has posed to human health and the environment, and has chosen not to use EPA's full legal authority to protect vulnerable communities in Puerto Rico.

## IV CONCLUSION AND QUESTIONS STILL NEEDING ANSWERS

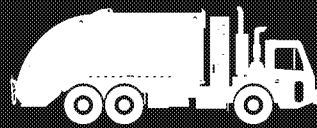
The paper trail exposing the poisoning of Puerto Rico is now becoming public, and the conclusions are clear: the EPA, the Puerto Rico authorities and most of the Commonwealth's municipal landfills have been either cooperating or colluding to allow a massive, toxic, illegal business of dumping thousands of tons of unregulated trash into holes in the ground all over the island. And it has been going on, right under the public's nose, for a decade or more. Increasing health threats emanating from these toxic sites such as the Zika virus, more than ever, mandate that we challenge the regulators to do their job.

Such a situation, across so many toxic sites, would never be tolerated on the U.S. mainland. This is a case of environmental injustice.

Furthermore, the landfill crisis that EPA has allowed to unfold in Puerto Rico is unique. Such a situation, across so many toxic sites, would never be tolerated on the U.S. mainland. The communities where the landfills are located in Puerto Rico are mostly economically disadvantaged, and the Commonwealth of Puerto Rico does not enjoy the status of a U.S. state. The communities affected do not, therefore, have the same access to resources for protecting their rights as American citizens, nor do they have as much of a voice to express their concerns as better-off communities on the mainland. This makes the landfill crisis in Puerto Rico a clear case of environmental injustice. The EPA is not providing protection to these communities that are enjoyed by more advantaged communities on the U.S. mainland.

**The remaining questions that must be asked by the people of Puerto Rico, the environmental justice movement in the United States, and those responsible in the Obama Administration and the US Congress for policing the EPA are these:**

- Why has Region 2 administrator Judith Enck taken such a hands-off, tepid approach to the crisis despite repeated, glaring reports from her enforcements staff for a decade or more? Was EPA Administrator Gina McCarthy made aware of the landfill crisis in Puerto Rico? When, and to what extent?
- What will a thorough review of the document trail inside the EQB, and between the EQB and the landfills, reveal about the 1997 gutting of local regulations? Were there financial interests in Puerto Rico directly involved that went beyond the municipalities themselves? Has the EPA or the Puerto Rico government conducted environmental testing or assessments of the extent of water, air and ground contamination around landfill sites that have been allowed to operate in violation of federal rules for decades? Has an assessment of hazardous waste dumping at these sites been conducted? Or were such investigations stymied internally?
- When are the non-compliant landfills going to be brought up to minimum EPA standards or closed?
- In addition to the volumes of violations of federal laws that have been documented in these files we've uncovered, were crimes committed? By whom? And if so, will there be justice?



The  
**POISONING**  
of **PUERTO RICO**